

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

2019 JUL 31 PM 4:17

CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXASBY _____
DEPUTY

LUKE PATTERSON, JACOB
PATTERSON, AND GARY HEITZ,
PLAINTIFFS,

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V.

CAUSE NO. 1:18-CV-998-LY

BUDBO, INC., LANEAXIS, INC., LANE
AXIS GPSCT, INC., AND RICK LYNN
BURNETT,
DEFENDANTS.

ORDER

Before the court in the above-styled cause of action is Defendants LaneAxis, Inc, LaneAxis GPSCT, Inc., and Rick Lynn Burnett, a/k/a Rick Burnett's Motion to Dismiss for Failure to Prosecute and Reply to Plaintiff's Response to Order to Show Good Cause filed May 28, 2019 (Dkt. No. 10) and Response to Rick Burnett's Motion to Dismiss Under FRCP 4(m) filed June 12, 2019 (Dkt. No. 13).

This case was filed on November 20, 2018. On April 3, 2019, this court ordered Plaintiffs to show cause as to why this cause should not be dismissed for failure to prosecute. On April 18, 2019, summons was executed on the following Defendants: Laneaxis, Laneaxis GPSCT, and Budbo, Inc. (Dkt. Nos. 6, 7, & 8). To date, the record does not reflect that Defendant Rick Burnett has been served.

On April 18, 2019, Plaintiffs responded to this court's show cause order that counsel for both parties had been in continuous settlement negotiations and that three out of four defendants have been served. Plaintiffs did not explain why Burnett had not yet been served. On May 28, 2019, counsel filed a notice of appearance for Laneaxis, Laneaxis GPSCT, and Rick Burnett (Dkt. No. 9). On May 23, 2019, Laneaxis, Laneaxis GPSCT, and Rick Burnett filed a motion to

dismiss this case in its entirety for failure to prosecute under Federal Rule of Civil Procedure

4(m). Rule 4(m) provides:

[i]f a defendant is not served within 90 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m).

Plaintiffs argue Defendants have waived service of process by making a general appearance without filing a motion under Rule 12(b). *See* Fed. R. Civ. P. 12(b). Plaintiffs are correct. Defendants Laneaxis, Laneaxis GPSCT, and Rick Burnett voluntarily appeared in this case, dispensing the need for service of process. The court will not dismiss this suit against Defendants for failure to prosecute.

IT IS ORDERED Defendants LaneAxis, Inc, LaneAxis GPSCT, Inc., and Rick Lynn Burnett, a/k/a Rick Burnett's Motion to Dismiss for Failure to Prosecute and Reply to Plaintiff's Response to Order to Show Good Cause filed May 28, 2019 (Dkt. No. 10) is **DENIED**.

IT IS FURTHER ORDERED that the parties are to submit to the court a Proposed Agreed Scheduling Order, in accordance with Federal Rule of Civil Procedure 26(f), that follows the form scheduling order of this court located on the website for the United States District Court for the Western District of Texas (www.txwd.uscourts.gov), the "Forms" tab, "Civil," "Austin Division," "Proposed Scheduling Order for Judge Yeakel," **on or before August 24, 2019**.

SIGNED this 31st day of July, 2019.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE